

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference BR3569 DP/AMM	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/FR2004/001667	International filing date (day/month/year) 29.06.2004	Priority date (day/month/year) 02.07.2003
International Patent Classification (IPC) or national classification and IPC B65D41/62, B65D41/34, B65D41/04, B21 D51/50		
Applicant PECHINEY CAPSULES ET AL		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of _____ sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> (sent to the applicant and to the International Bureau) a total of <u>4</u> sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																									
<p>4. This report contains indications relating to the following items:</p> <table><tr><td><input checked="" type="checkbox"/></td><td>Box No. I</td><td>Basis of the report</td></tr><tr><td><input type="checkbox"/></td><td>Box No. II</td><td>Priority</td></tr><tr><td><input checked="" type="checkbox"/></td><td>Box No. III</td><td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td></tr><tr><td><input checked="" type="checkbox"/></td><td>Box No. IV</td><td>Lack of unity of invention</td></tr><tr><td><input checked="" type="checkbox"/></td><td>Box No. V</td><td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td></tr><tr><td><input type="checkbox"/></td><td>Box No. VI</td><td>Certain documents cited</td></tr><tr><td><input type="checkbox"/></td><td>Box No. VII</td><td>Certain defects in the international application</td></tr><tr><td><input type="checkbox"/></td><td>Box No. VIII</td><td>Certain observations on the international application</td></tr></table>		<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input checked="" type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input checked="" type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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Date of submission of the demand	Date of completion of this report																								
Name and mailing address of the IPEA/EP	Authorized officer																								
Facsimile No.	Telephone No.																								

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Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This report is based on translations from the original language into the following language _____ which is the language of a translation furnished for the purposes of:

- ☐ international search (Rule 12.3 and 23.1(b))
☐ publication of the international application (Rule 12.4)
☐ international preliminary examination (Rule 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

☐ the international application as originally filed/furnished

☒ the description:

pages 1-31 as originally filed/furnished

pages* _____ received by this Authority on _____

pages* _____ received by this Authority on _____

☒ the claims:

nos. 2 (in part), 3-47, 48 (in part) as originally filed/furnished

nos.* _____ as amended (together with any statement) under Article 19

nos.* 1,2 (in part), 48 (in part), 49-55 received by this Authority on 30.05.2005 with letter of 26.05.2005

nos.* _____ received by this Authority on _____

☒ the drawings:

sheets 1/19-19/19 as originally filed/furnished

sheets* _____ received by this Authority on _____

sheets* _____ received by this Authority on _____

☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

☐ the description, pages _____

☐ the claims, nos. _____

☐ the drawings, sheets/figs _____

☐ the sequence listing (*specify*): _____

☐ any table(s) related to sequence listing (*specify*): _____

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

☐ the description, pages _____

☐ the claims, nos. _____

☐ the drawings, sheets/figs _____

☐ the sequence listing (*specify*): _____

☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application

☒ claims Nos. 3, 13, 16, 17, 19-25, 28-31, 33-46

because:

☐ the said international application, or the said claims Nos. _____
relate to the following subject matter which does not require an international preliminary examination (*specify*):

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. _____
are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. _____ are so inadequately supported
by the description that no meaningful opinion could be formed.

☒ no international search report has been established for said claims Nos. 3, 13, 16, 17, 19-25, 28-31, 33-46

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐ has not been furnished

☐ does not comply with the standard

the computer readable form

☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☐ See Supplemental Box for further details.

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Box No. IV Lack of unity of invention

1. ☒ In response to the invitation to restrict or pay additional fees the applicant has:
 - ☐ restricted the claims.
 - ☐ paid additional fees.
 - ☐ paid additional fees under protest.
 - ☒ neither restricted the claims nor paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is:
 - ☐ complied with.
 - ☐ not complied with for the following reasons:
4. Consequently, this report has been established in respect of the following parts of the international application:
 - ☐ all parts.
 - ☐ the parts relating to claims Nos. _____

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	47, 50-55	YES
	Claims	1, 2, 4-12, 14, 15, 18, 26, 27, 32, 48, 49	NO
Inventive step (IS)	Claims	50-55	YES
	Claims	1, 2, 4-12, 14, 15, 18, 26, 27, 32, 47-49	NO
Industrial applicability (IA)	Claims	1, 2, 4-12, 14, 15, 18, 26, 27, 32, 47-55	YES
	Claims		NO
2. Citations and explanations (Rule 70.7)			
1. Reference is made to the following documents in the present notification:			
D1: WO 94/20237 A (METAL CLOSURES GROUP LTD) 15 September 1994			
D2: DE 10 69 486 B (VEREINIGTE ALUMINIUMFABRIKEN RISTAU) 19 November 1959			
D3: PATENT ABSTRACTS OF JAPAN vol. 017, no. 343 (M-1436), 29 June 1993 - & JP 05 042954 A (HISASHI KINZOKU KOGYO KK), 23 February 1993			
D4: US 1 820 192 A (HOTHERSALL JOHN M) 25 August 1931			
2. INDEPENDENT CLAIM 1			
The present application fails to comply with the requirements of <u>PCT Article 33(1)</u> since the subject matter of claim 1 does not meet the requirement of novelty defined in <u>PCT Article 33(2)</u> .			
Document D1 describes all of the features in claim 1, particularly a constant thickness for the radially expanded portion and the cylindrical			

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
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portion of the outer skirt (see figure 4 and claims 13 and 14).

Admittedly, document D1 does not explicitly indicate that the thickness of the radially expanded portion is the same as that of the cylindrical portion of the outer skirt, but neither does it explicitly indicate that the thicknesses of these two portions are different. A person skilled in the art seeking to produce a sealing cap and starting with the teaching of D1 (cf. in particular figure 4) would immediately opt for the most obvious and trivial solution, namely that of forming the two portions with the same thickness. Although it is conceivable that, once the radially expanded portion has been formed, the intermediate portions (19a) between the cylindrical portion and the radially expanded portion may have a thinner wall, there is no reason to assume that the whole of the radially expanded portion would have a thinner wall. On the contrary, since the radially expanded portion is straight and has a non-negligible length, there is every reason to believe that the thickness of the radially expanded portion would be the same as that of the cylindrical portion of the skirt, even once the radial expansion process is complete.

A reasoning consistent with that set forth above can be based on D2, which also describes all of the features in claim 1 (see figures 1 to 4 and claims 1 to 3).

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
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3. INDEPENDENT CLAIM 48

The present application fails to comply with the requirements of PCT Article 33(1) since the subject matter of claim 48 does not meet the requirement of novelty defined in PCT Article 33(2). Indeed, documents D1 and D2 similarly describe a cap having all of the features in claim 48 (the discussion in point 2 above is also applicable to claim 48).

4. INDEPENDENT CLAIM 49

The present application fails to comply with the requirements of PCT Article 33(1) since the subject matter of claim 49 does not meet the requirement of novelty defined in PCT Article 33(2).

Indeed, documents D1 and D2 also respectively describe methods for making a cap having all of the features in claim 49 (see claims 1 to 4 and column 3, line 68 to column 5, line 17, respectively; the discussion in point 2 above is also applicable to claim 49).

5. DEPENDENT CLAIMS 2, 4 TO 12, 14, 15, 18, 26, 27, 32 AND 47

These claims do not contain any features which, when combined with the features of any one of the claims to which they refer, might define subject matter that complies with the requirements of

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
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novelty and inventive step of the PCT (PCT Article 33(2) and (3)).

D1 describes the additional features in claims 2, 4 to 9, 11, 12, 15, 18, 26, 27, 32, 47 (see figure 4 and claims 13 and 14).

D2 describes the additional features in claims 2, 4 to 8, 10 to 12, 14, 15, 26, 27 and 32 (see figure 4 and claims 13 and 14).

D3 describes the additional features in claims 10 and 14 (see the abstract and figure 4).

D4 describes the additional features in claim 47 (see figures 1 to 3).

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of:

Box IV.

The various groups of inventions are as follows:

Claims 1, 2, 4 to 12, 14, 15, 18, 26, 27, 32, 47, 48 and 49 to 55

A sealing cap including a body with a radially expanded portion having a predetermined thickness for facilitating manual grasping of the cap during unscrewing thereof, and a method for making same.

Claims 1 and 13

A cap including an insert and a body, characterised in that the insert includes an arch and a recessed spacing means.

Claims 1, 16 and 17

A cap including an insert and a body, characterised in that the insert includes a so-called "short" inner skirt.

Claims 1 and 19 to 25

A cap including an insert and a body, characterised in that the insert includes a so-called "long" or "extra long" inner skirt in such a way that it can be provided with a tamper-evident means.

Claims 1, 3, 28, 29, 45 and 46

A cap including an insert and a body, characterised in that coupling means are provided between the insert and the body.

Supplemental Box

Claims 1, 30 and 31

A cap including an insert and a body made of aluminium, tin or a combined metal and plastic multilayer material, particularly surface-treated aluminium.

A cap including an insert, a body and a gasket insert or a sealing insert, and particularly including compressive means.

Claims 1 and 44

A cap including an insert and a body, characterised in that a spout device or so-called "anti-refill" device is releasably secured to the insert.

The present application fails to comply with the requirements of PCT Rule 13.1 because it relates to a plurality of inventions that are not so linked as to form a single general inventive concept. The eight different inventions are set forth below.

(a) The common concept linking the eight inventions is a cap as per claim 1. This common concept is not novel because document WO 94/20237 A (see figure 4 and Box V, point 2 above) describes all of the features in claim 1, particularly the constant thickness of the radially expanded portion and the cylindrical portion of the outer skirt.

It should be noted that document DE 1 069 486 B also describes all of the features in claim 1 (see figures 1 to 4 and Box V, point 2 above).

It follows that the features in claim 1 cannot be considered to be special technical features.

Supplemental Box

(b) The other features of the eight inventions solve eight different problems and said features are not corresponding special technical features. Specifically:

- The problem to be solved by the first invention (claims 1, 2, 4 to 12, 14, 15, 18, 26, 27, 32 and 47 to 55) is that of economically producing an easy to open sealing cap. The proposed solution to this problem is a radially expanded insert, with the radially expanded portion and the cylindrical portion of the skirt having the same thickness.
- The problem to be solved by the second invention (claims 1 and 13) is that of enabling the height of the cap to be altered. The proposed solution to this problem is an insert including an arch and a recessed spacing means.
- The problem to be solved by the third invention (claims 1, 16 and 17) is that of providing a capsule with an insert that is simple to produce. The proposed solution to this problem is an insert including a skirt having a height of less than 20 mm.
- The problem to be solved by the fourth invention (claims 1 and 19 to 25) is that of providing a capsule with an insert that provides the bottle neck with a high degree of protection. The proposed solution to this problem is an insert having a length of at least 20 mm and extending as far as a tamper-evident ring.
- The problem to be solved by the fifth invention (claims 1, 3, 28, 29, 45 and 46) is that of providing a means for connecting an insert and a cap body. The proposed solution to this problem involves causing the inner skirt of the insert to engage all or part of the cylindrical

Supplemental Box

portion of the outer skirt.

- The problem to be solved by the sixth invention (claims 1, 30 and 31) is that of providing a material suitable for making a cap. The proposed solution to this problem is the use of aluminium, tin or a combined metal and plastic multilayer material to produce the cap body.
- The problem to be solved by the seventh invention (claims 1 and 33 to 43) is that of providing a capsule with enhanced sealing means. The proposed solution to this problem is a cap including a gasket insert or a sealing insert.
- The problem to be solved by the seventh invention (claims 1 and 44) is that of providing a safety device for a cap. The proposed solution to this problem involves a cap including a spout device and/or a so-called "anti-refill" device releasably secured to the insert.

Given that the problems that the eight inventions are intended to solve and the technical features intended to solve said problems are different, the various technical features cannot be considered to be special technical features as defined in PCT Rule 13.2.